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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,341	03/31/2004	Thomas Weisel	SUS1.PAU.03	8837
23386	7590	07/05/2005	EXAMINER	
MYERS DAWES ANDRAS & SHERMAN, LLP			FLANAGAN, BEVERLY MEINDL	
19900 MACARTHUR BLVD.,			ART UNIT	PAPER NUMBER
SUITE 1150				3739
IRVINE, CA 92612			DATE MAILED: 07/05/2005	

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/816,341	WEISEL, THOMAS
	Examiner Beverly M. Flanagan	Art Unit 3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 1-13 and 18-21 is/are allowed.
- 6) Claim(s) 14-17 and 22 is/are rejected.
- 7) Claim(s) 23 is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.



BEVERLY M. FLANAGAN  
PRIMARY EXAMINER

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10/19/04
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_

## DETAILED ACTION

### ***Information Disclosure Statement***

The information disclosure statement filed October 19, 2004 has been made of record and the references cited therein have been considered by the examiner.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 14-17 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Grinberg et al. (U.S. Patent No. 5,921,956).

**In regard to claims 14-17 and 22,** Grinberg et al. teach a surgical instrument 10 comprised of an inner tubular shaft 18 and an outer tubular shaft 20 where outer tubular shaft 20 is also enclosed by a steering sleeve 22 (see Figure 1). Shafts 18, 20 and 22 are coaxial and are flexible in a bend region 24 and sleeve 22 is attached to a knob 30 that facilitates movement of sleeve 22 (see col. 3, lines 17-20). When knob 30 is rotated, it applies proximally directed and distally directed axial forces to sleeve halves 22a and 22b and the axial motion of sleeves halves 22a and 22b exerts a push-pull force on the distal tip 26, thereby bending shafts 18, 20 and 22 in flexible region 24 and steering distal tip 26 in corresponding side-to-side directions (see col. 3, lines 17-30 and Figure 1, with attention to arrows 32 and 33 that indicate movement). **With further**

**respect to claim 22**, Grinberg et al. also teach that inner tubular shaft 18 has a plurality of slots 50 and shaft 20 has a plurality of slots 54 to impart the flexibility to the shafts (see figure 2). Similarly, sleeve halves 22a and 22b also have a series of slots 66a and 66b and when sleeve halves 22a and 22b are in place on outer shaft 20, slots 66a and 66b are disposed in opposing relationship in flexible region 24 to slots 50 and 52 (see col. 4, lines 27-40). Thus, as broadly as claimed, slots 50 and 54 constitute a slot pattern and slots 66a and 66b constitute a wedge mechanism.

#### ***Allowable Subject Matter***

Claims 1-13 and 18-20 are allowed.

Claim 23 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: The prior art does not teach or fairly suggest the invention as set forth in independent claims 1, 9 and 18 of the instant invention reciting, *inter alia*, an articulating shaft with a bendable distal end, comprised of an outer member having a slot and an inner member having a wedge that is moveable within the slot where the inner member is operable at the proximal end to move the wedge within the slot. Grinberg et al., U.S. Patent No. 5,921,956 (applied above), teaches a bendable shaft for a medical instrument, but does not teach the slots and wedge moveable within the slots, as set forth in claims 1, 9 and 18 of the instant invention. Similarly, other prior art references,

such as Konstorum et al. U.S. Patent No. 5,857,964; Stone et al., U.S. Patent No. 6,491,626; Chikama et al., U.S. Patent No. 5,178,129 and Allred, III et al., U.S. Patent No. 4,790,294 teach articulated shafts for medical instruments, but lack the slots and wedge moveable within the slots, as recited in claims 1, 9 and 18 of the instant invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Beverly M. Flanagan whose telephone number is (571) 272-4766. The examiner can normally be reached on Mondays, Tuesdays and Thursdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Beverly M. Flanagan  
Primary Examiner  
Art Unit 3739

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